UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUZANNE CRUISE CREATIVE SERVICES, INC., a Kansas corporation, and LAURIE COOK, an individual,

Plaintiffs,

-v-

BARRINGTON STUDIOS LTD, a New Hampshire corporation, ANTHONY SPERANDEO, an individual, GEORGE LENCSAK, an individual, SHOPKO STORES OPERATING CO., LLC, a Delaware Limited Liability Company, FRED MEYER STORES, INC., a Delaware corporation, WAL-MART STORES, INC., a Delaware corporation, CVS CAREMARK CORPORATION, a Delaware corporation, DOLLAR GENERAL CORPORATION, a Tennessee corporation, DOLLAR TREE, INC., a Virginia corporation, BIG LOTS, INC., a Delaware corporation, and Does 1-20,

Defendants.

CIVIL ACTION

Index No: 10-cv-4293 (PKC)

ANSWER TO FIRST AMENDED COMPLAINT

DEFENDANT BARRINGTON STUDIOS LTD.'S
ANSWER TO FIRST AMENDED COMPLAINT

Defendant Barrington Studios Ltd. ("Barrington" or "Defendant"), by and through its undersigned attorneys, hereby demands a trial by jury on all issues so triable and hereby answers each of the numbered paragraphs of the First Amended Complaint served by Plaintiffs Suzanne Cruise Creative Services, Inc. and Laurie Cook ("Plaintiffs") on or about January 5, 2011 (the "Complaint") as follows:

THE PARTIES

1. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

2. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

3. Defendant admits that Barrington's principal place of business is located at 54 Technology Way, Nashua, New Hampshire, 03060, and denies the remaining allegations in Paragraph 3.

4. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

5. Defendant admits the allegations in Paragraph 5.

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

7. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

8. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

9. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

10. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

11. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

JURISDICTION AND VENUE

14. Paragraph 14 of the Complaint contains conclusions of law to which no response is required.

15. Paragraph 15 of the Complaint contains conclusions of law to which no response is required.

16. Paragraph 16 of the Complaint contains conclusions of law to which no response is required.

NATURE OF THE CASE

17. Paragraph 17 of the Complaint contains conclusions of law to which no response is required.

FACTS

18. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

21. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

22. Defendant admits that Lencsak is identified as an officer in incorporation documents and other documentation, and that Lencsak handled day to day company operations, particularly with respect to sales, marketing and administration, and that Lencsak currently has licensing responsibilities. Defendant specifically denies that Lencsak was responsible for licensing prior to the death of Kristene Burleigh in early 2010. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 22.

23. Defendant admits that Suzanne Cruise met with Kristine Burleigh and Kitt Wichman in or about May 2006 in New York and that Cruise offered Barrington an opportunity to license certain images. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 23.

24. Defendant admits that on August 25, 2006, Cruise sent Kristene Burleigh an email that said “I found your info on royalty rates, 4% is fine”. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 24.

25. Defendant admits that it sent its form a license agreement to Cruise along with a cover letter on September 6, 2006. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies the allegations contained in the first sentence of Paragraph 26. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

28. Defendant admits that on December 12, 2008, Ms. Burleigh sent an email to Cruise stating, among other things, that "there is a mix up here by not having the contract signed", that "we do have correspondence going back to Sept 06, 06 showing we were in communication", "[w]e did not do anything with malice or to avoid royalties" and further offering "we would most certainly make any necessary arrangements to [you] for the proper reimbursement". Barrington denies that any of Ms. Burleigh's statements mean that the parties did not have a license to use the works at issue. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 28.

29. Though plaintiffs have not cited to specific correspondence, Defendant admits the allegations in Paragraph 29 with respect to Shopko, CVS, Wal-Mart, Dollar General and Dollar Tree. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

30. Though plaintiffs have not cited to specific correspondence, Defendant admits that on December 24, 2008, Cruise sent an email to Ms. Burleigh purporting to reference a discussion "late last week". Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 30.

31. Defendant admits that Cruise sent an email to Tony Sperandeo on January 13, 2009. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 31.

32. Defendant admits that on February 8, 2009, Mr. Sperandeo sent an email to Cruise explaining the oversight and stating, among other things, "I think your request for settlement is extremely high, based on the circumstances. We have three partners and will have to vote on whether to accept your offer …." Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 32.

33. Defendant denies the allegations in Paragraph 33.

34. Defendant admits that in 2007 and 2008 Barrington sold product to certain customers and that it did not make royalty payments due to an oversight. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 34.

35. Defendant admits that it did not send "post-production samples" to plaintiffs, but denies that it was required to do so.

36. Defendant admits that it did not provide plaintiffs with a "certificate of insurance to cover Licensor's product liability exposure", but denies that it was required to do so.

37. Defendant denies the allegations in Paragraph 37, except states that certain Barrington employees have on occasion travelled to New York to view artwork.

38. Defendant admits that prior to sending high-resolution artwork, Cruise sent Barrington copies of certain images of Cook for Barrington's consideration. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 38.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

40. Defendant denies the allegations in Paragraph 40.

41. Defendant denies the allegations in Paragraph 41.

42. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

43. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

44. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

45. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

46. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

47. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

48. Defendant denies the allegations in this paragraph.

49. Defendant denies the allegations in this paragraph.

50. Defendant admits that in or about August 2007, Barrington sold products pursuant to an agreement between Barrington and Cook and/or Cruise. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 50.

51. Defendant denies the allegations in this Paragraph, except admits that in 2007 and 2008, Barrington sold products pursuant to an agreement between Barrington and Cook and/or Cruise. Other than as expressly admitted, Defendant denies the allegations contained in Paragraph 51.

52. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to Shopko. Barrington lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

53. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to Fred Meyer. Barrington lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

54. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to CVS. Barrington lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

55. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to Wal-Mart. Barrington lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

56. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to Dollar General. Barrington lacks knowledge or

information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

57. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to Dollar Tree. Barrington lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

58. Defendant denies the allegations in this Paragraph, except admits that in 2007 and/or 2008, Barrington sold products to Big Lots. Barrington lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and therefore denies them.

59. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

60. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

61. Defendant denies the allegations in Paragraph 61.

62. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

63. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph and therefore denies them.

64. Defendant admits that in late 2008, Cruise asked Barrington to cease selling certain products and that Barrington immediately did so. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies the allegations contained in Paragraph 67.

COUNT I – COPYRIGHT INFRINGEMENT

68. Defendants restate their answers to paragraphs 1 through 67 as if more fully set forth herein.

69. Defendant denies the allegations in this paragraph.

70. Defendant denies the allegations in this paragraph.

71. Defendant denies the allegations in this paragraph.

COUNT II – CONTRIBUTORY COPYRIGHT INFRINGEMENT

72. Defendants restate their answers to paragraphs 1 through 71 as if more fully set forth herein.

73. Defendant denies the allegations in this paragraph.

74. Defendant denies the allegations in this paragraph.

75. Defendant denies the allegations in this paragraph.

76. Defendant denies the allegations in this paragraph.

77. Defendant denies the allegations in this paragraph.

COUNT III – FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION

78. Defendants restate their answers to paragraphs 1 through 77 as if more fully set forth herein.

79. Defendant denies the allegations in this paragraph.

80. Defendant denies the allegations in this paragraph.

81. Defendant denies the allegations in this paragraph.

COUNT IV – COMMON LAW TRADE DRESS INFRINGEMENT

82. Defendants restate their answers to paragraphs 1 through 81 as if more fully set forth herein.

83. Defendant denies the allegations in this paragraph.

84. Defendant denies the allegations in this paragraph.

85. Defendant denies the allegations in this paragraph.

COUNT V– COMMON LAW UNFAIR COMPETITION

86. Defendants restate their answers to paragraphs 1 through 85 as if more fully set forth herein.

87. Defendant denies the allegations in this paragraph.

88. Defendant denies the allegations in this paragraph.

89. Defendant denies the allegations in this paragraph.

COUNT VI – N.Y. GENERAL BUSINESS LAW § 360-1

90. Defendants restate their answers to paragraphs 1 through 89 as if more fully set forth herein.

91. Defendant denies the allegations in this paragraph.

92. Defendant denies the allegations in this paragraph.

93. Defendant denies the allegations in this paragraph.

94. Defendant denies the allegations in this paragraph.

* * *

Defendant denies all other allegations not otherwise specifically addressed in its Answer.

RESPONSE TO PRAYER FOR RELIEF

Defendant denies that plaintiffs are entitled to any of the relief requested in the Complaint, or to any relief whatsoever.

AFFIRMATIVE DEFENSES

Defendant alleges and asserts the following defenses in response to the allegations of Plaintiffs' First Amended Complaint, undertaking the burden of proof as to only those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. Defendant reserves the right to assert any additional defenses that may be disclosed during the course of additional investigation and discovery.

First Affirmative Defense

Plaintiffs' claims, in whole or in part, individually and collectively, fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs are barred from asserting their claims, in whole or in part, under the doctrine of unclean hands.

Third Affirmative Defense

Plaintiffs are barred from asserting their claims, in whole or in part, under the doctrine of laches.

Fourth Affirmative Defense

Plaintiffs are barred from asserting their claims, in whole or in part, under the doctrine of waiver.

Fifth Affirmative Defense

Plaintiffs are barred from asserting their claims, in whole or in part, under the doctrine of acquiescence.

Sixth Affirmative Defense

Plaintiffs are barred from asserting their claims, in whole or in part, under the doctrine of estoppel.

Seventh Affirmative Defense

Plaintiffs have sustained no injury in fact or damages caused by any act of Defendant.

Eighth Affirmative Defense

Plaintiffs' alleged claims are barred to the extent the applicable statutes of limitations and limitations on damages have elapsed.

Ninth Affirmative Defense

Plaintiffs have failed to mitigate their damages, if any, and to the extent of their failure to mitigate, any damages awarded to Plaintiffs should be reduced accordingly.

Tenth Affirmative Defense

Plaintiffs' claims are barred by Plaintiffs' failure to perform all conditions, covenants and promises required by them to be performed in accordance with the terms and conditions of the agreement at issue.

Eleventh Affirmative Defense

Defendant acted in good faith at all times, and any alleged infringement that occurred, which Defendant continues to deny, was done innocently and without knowledge or intent.

Twelfth Affirmative Defense

Plaintiffs' claims are subject to the defense of license, or in the alternative, to the defense of implied license.

Thirteenth Affirmative Defense

Plaintiffs are barred from asserting their claims, in whole or in part, under the doctrine of copyright misuse.

Fourteenth Affirmative Defense

Plaintiffs lack standing to bring each and every claim asserted in the Complaint.

Fifteenth Affirmative Defense

Plaintiffs' claims asserted under state law are preempted by applicable federal law.

Sixteenth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, because any use by the Defendant of the Works, if any, was a non-trademark use.

Additional Defenses

Defendant reserves the right to assert additional defenses based on information learned or obtained during discovery.

PRAYER

Defendant prays for the following relief:

1) That judgment be entered against Plaintiffs on each and every count of the Complaint and on all relief sought by Plaintiffs;

2) That Defendant be awarded its costs and reasonable attorneys' fees in defense of this action;

3) For such other and further relief as this Court deems fair and just.

Dated: January 26, 2011
New York, New York

REED SMITH LLP

By: _s/ Kristina Mentone___________

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TO: All Counsel of Record (*VIA ECF*)